IN THE PUNJAB AND HARYANA HIGH COURT AT CHANDIGARH

103 **CWP-18073-2023**
Date of Decision: 24.05.2023

JATINDER KUMAR THROUGH HIS LR SWAPNIL
... Petitioner
VERSUS

HARYANA URBAN DEVELOPMENT AUTHORITY & ORS.
... Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ.
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Present: Ms. Anju Sharma, Advocate
for the petitioner.
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VINOD S. BHARDWAJ, J. (ORAL)

The challenge in the present petition is to the order dated 15.02.2022 passed by the State Consumer Disputes Redressal Commission, U.T. Chandigarh (hereinafter to be referred to as 'State Commission') in R.A. No.7 of 2021 alongwith M.A. No.753 of 2021 and order dated 12.05.2009 passed by the National Consumer Disputes Redressal Commission, New Delhi (hereinafter to be referred to as 'National Commission').

Briefly summarized, the facts of the present case are that Jatinder Kumar- father of the petitioner, was proprietor of the firm M/s Movietone Televisions, Guddha, Jhajjar. Vide his application dated 26.02.1992, he had applied for plot No.39 in Sector 25, but was allotted plot No.217 in Sector 29 vide memo No.2798 dated 30.03.1992 measuring 592.96 sq. meters at a tentative price of Rs.2,10,500.80/- i.e. Rs.355/- per sq. meter. As per the provisional letter of allotment, a sum of Rs.71,000/- already received alongwith the application as earnest money was adjusted and the father of the petitioner was granted 35 days' time to complete 25% of the tentative cost while the remaining 75% was to be deposited within 09 months alongwith interest in case loan was to be arranged else within three months. In the event of the failure to seek disbursement of the loan, an extension by a period of three months could be availed on payment of requisite charges. Father of the petitioner submitted a request to the respondents for allotment of plot in Sector 25 in lieu of plot No.217 in Sector 29. The respondent-Authorities conducted an interview and thereafter, offered to allot plot No.122 measuring 1000 sq. meters in Sector 29 in lieu of plot No.217 in Sector 29, HUDA, Panipat vide memo No.83 dated 05.01.1993. The remaining terms and conditions of the allotment remained the same. It is averred in the petition that father of the petitioner had earlier submitted an application on 19.04.1990 for allotment of plot measuring 2000 sq. meters in Sector 25/29. The abovesaid application was withdrawn before submitting a fresh application on 26.02.1992 for allotment of industrial plot in Sector 25, Urban Estate, Panipat. It was alleged that plot No.122 in Sector 29 Panipat was allotted after multiple representations and that too at an enhanced rate whereas the allotment ought to have been made at the rate at which the initial plot No.217 had been allotted to him.

Aggrieved thereof, a consumer complaint was filed by the father of the petitioner before the District Consumer Disputes Redressal Forum, Panipat (hereinafter to be referred to as ‘District Forum') claiming that the demand of Rs.408/- per sq. meter against the previous rate of Rs.355/- per sq. meter was unsustainable. It was thus prayed that the respondents should allot a plot in Sector 25 or any other suitable location at the rate of Rs.355/- per sq. meter and to also grant suitable and adequate time for payment as per the letter of allotment.

A reply was filed to the abovesaid complaint by the respondent-HUDA (now HSVP) wherein various objections were taken including that the father of the petitioner had earlier instituted proceedings before the Civil Court before approaching the District Forum. It was also averred that the father of the petitioner was required to deposit the balance 75% amount within a period of 09 months and another period of three months could also be availed on payment of requisite extension fee/charges, failing which the offer of allotment was to stand withdrawn. However, the needful was not done even though the father of the petitioner was requested to deposit the balance 75% amount vide letter No.5270 dated 16.08.1994. Against the period of 09+03 months, a period of 20 months had already expired since the issuance of provisional letter of allotment. The father of the petitioner had chosen not to respond even after the single window service meeting held on 10.01.1995. A provisional letter of allotment, on the then prevailing rate, was issued vide letter No.1621-22 dated 10.02.1995. Instead of depositing the amount, a request was submitted by the father of the petitioner again to allot a plot in Sector 25 instead of Sector 29 and despite seeking extension of time for depositing the balance amount vide application dated 01.11.1995. Averring that there was no vacant plot in Sector 25 in the general category and of the said dimension, the request of the father of the petitioner was declined after consideration and the allotment was also cancelled as per the terms and conditions of letter of allotment and the applicable rules. It was averred that it is incorrect that the father of the petitioner never submitted any application or willingness of allotment of plot in Sector 29, rather the initial application dated 19.04.1990 was itself for allotment of plot in Sector 29/25. Both these sectors are adjacent. The fresh letter of allotment was with respect to Plot No.122 in Sector 29, which was exchanged on 05.01.1993 with plot No.217 in Sector 29, on the request of the father of the petitioner and even the size of the plot was increased. It was a fresh allotment and fresh rates were applicable. There being no provision for extension of time for payment of balance allotment price after the expiry of 09+03 months, the order of resumption was rightly passed. The father of the petitioner having failed to deposit the balance amount, had no subsisting right on the said plot.

After considering the respective submissions, the above said complaint was decided by the District Forum, Panipat vide order dated 15.05.2001 in favour of the father of the petitioner to the extent that the plot has to be re-allotted at the rate of Rs.355/- per sq. meter and that the respondent-HUDA is not entitled to charge any interest/penal interest from the complainant (father of the petitioner) for the difference in the price of the plot. The respondent-HUDA was directed to pay interest also on the deposited amount @ 12% per annum from the date of allotment till realization. Further an additional period of 09 months was granted to the father of the petitioner to deposit the total balance amount of the plot. Additionally, compensation and litigation expenses were also awarded to the father of the petitioner.

Aggrieved of the said order, the respondent-HUDA preferred an appeal No.2995-2001(HRY)/RBT/1134/2008 before the State Commission, U.T., Chandigarh. The said appeal of the respondent-HUDA (now HSVP) was allowed by the State Commission and it was observed that the matter had been considered by the Chief Administrator of the HSVP on 06.05.1994 and had directed the father of petitioner to deposit 25% amount within a period of 35 days of the issuance of provisional letter of allotment and the balance 75% amount within a period of 09 months. However, as the formal letter of allotment had not been issued for plot No.122 in Sector 29, Panipat, the Estate Officer was directed by the Chief Administrator to issue provisional letter of allotment for the exchanged plot. A fresh letter of allotment (Ex.C-14) was thereafter issued on 10.02.1995 demanding the rate of plot as Rs.408/- per sq. meter instead of Rs.355/- per sq. meter as the prices of the plots in the area had increased in the meanwhile. It was thus requested that 25% of the allotment price be deposited within 35 days and the balance 75% amount within 09 months, if the term loan was to be raised. An amount of Rs.42,258.80/- was deposited by the father of the petitioner vide receipt dated 13.03.1995 so as to complete 25% of the sale price. A protest petition against the increase in the rate of allotment was filed by the father of the petitioner vide letter dated 08.04.1995 (Ex.C-18). The father of the petitioner was conveyed that the matter was placed before the Single Window Meeting held on 10.01.1995 and the representative of the father of the petitioner agreed to the allotment price of Rs.408/- per sq. meter. The issue qua price of allotment thus could not be reopened. Notwithstanding the above communication, the father of the petitioner did not comply with the remaining terms and conditions of the original letter of allotment and did not deposit the balance 75% amount within the stipulated period. It was thus held that there was no deficiency on the part of the HSVP and it was on the request of the father of the petitioner that fresh allotment was made while issuing the letter of allotment on 10.02.1995 and the then prevailing rate of allotment was rightly charged. The said letter of allotment is not a continuation of the previous allotment. Order of the District Forum, Panipat was accordingly set aside.

The above said order of the State Commission was challenged by the father of the petitioner in Revision Petition No.1586 of 2009 before the National Consumer Disputes Redressal Commission, New Delhi and vide its order dated 12.05.2009, the Revision Petition filed by the father of the petitioner was dismissed holding that the HSVP was free to charge the prevailing rate of plot at the time of allotment. Since the father of the petitioner was keen to get larger plot and a fresh allotment was made on his request, the rate applicable as on the date of fresh allotment would be applicable.

Notwithstanding the dismissal of the Revision Petition by the National Consumer Disputes Redressal Commission, the father of the petitioner moved M.A. No.975 of 2019 on 19.11.2019 i.e. after a gap of more than 10½ years of the dismissal of the Revision Petition by the National Commission, New Delhi to the State Commission, U.T. Chandigarh under Section 151 of the C.P.C. for seeking annulment of order dated 13.01.2009 passed in Appeal No.2995-2001(HRY)/RBT/1134/2008. All the facts as had been raised in the original complaint were reiterated and it was alleged that the respondent-HSVP had misrepresented in its reply to mislead the Authorities. A prayer was thus made that the order of the State Consumer Disputes Redressal Commission dated 13.01.2009 be set aside and the order of the District Forum, Panipat be restored. The response to the abovesaid application was also filed by the HSVP, wherein they raised various objections including the maintainability of the application itself.

After considering the arguments advanced by both sides, the abovesaid application was dismissed by the State Commission, U.T. Chandigarh. It was observed that the final order/judgment could be annulled only when it was passed by a Court lacking jurisdiction or the order was obtained through extrinsic fraud. The narration of the facts in the case shows that the father of the petitioner had also specifically preferred Revision Petition before the National Commission, New Delhi and there was no allegation with regard to any element qua fraud. It was also noticed that the application in question has been filed after a lapse of more than 20 years since the commencement of the proceedings and after a gap of more than 10½ years from the order dated 12.05.2009 passed by the National Commission, which had already attained finality. The application was thus an abuse of process of law and was devoid of merits. The same was thus dismissed vide order dated 07.09.2021.

The petitioner thereafter preferred Review Application in M.A. No.975 of 2019 as well as another M.A. No.753 of 2021 for seeking annulment of the order of the State Commission again, for the same reasons. Noticing that the earlier application for seeking annulment had earlier been dismissed on 07.09.2021, the second application i.e. M.A. No.753 of 2021 was thus held to be not maintainable and that in the absence of any patent error in the order dated 07.09.2021 passed in M.A. No.975 of 2019, even the Review Application No.07 of 2021 was dismissed by a common order dated 15.02.2022.

Challenge has now been made to the order dated 15.02.2022 passed in R.A. No.07 of 2021 as well as M.A. No.753 of 2021 alongwith order dated 12.05.2009 passed by the National Commission, New Delhi.

Learned counsel for the petitioner has vehemently argued that the order in question suffers from misappreciation of the facts as it was passed on a reasoning that the father of the petitioner had applied for allotment of a plot in Sector 25/29, hence, the allotment of plot in Sector 29 cannot be stated to be invalid. She further argued that the application submitted on 19.04.1990 for allotment of plot in Sector 29/25, Urban Estate, Panipat was for an area measuring 2000 sq. meters and that the said application had already been withdrawn. A subsequent application was submitted on 26.02.1992, which was for allotment of plot measuring 1000 sq. meters only in Sector 25, Urban Estate, Panipat and the said application, being a fresh one, could not have been considered for allotment of plot in Sector 29. The stand of the respondents in referring to the earlier application dated 19.04.1990 was thus fraudulent and intended to mislead the Court/Forum/Commission. The said application was hence not subsisting at the time when the subsequent application, forming basis of allotment of the plot, was submitted. The State Commission, U.T., Chandigarh as well as the National Commission, New Delhi have failed to consider the abovesaid misleading aspect. She further argued that the writ petition was maintainable against the order dated 12.05.2009 passed by the National Commission, New Delhi dismissing the Revision Petition in view of the judgment of the Hon'ble Supreme Court passed in the matter of ***Ibrat Faizan Versus Omaxe Build Home Pvt. Ltd.*** bearing ***Civil Appeal No.3072 of 2022*** decided on ***13.05.2022,*** wherein the Hon'ble Supreme Court has specifically held that the Consumer Disputes Redressal Commission is a Tribunal which is subject to the writ jurisdiction of the High Court. Hence, where the remedy available to an aggrieved party is only in the form of filing an SLP (Special Leave

Petition) instead of a statutory appeal before the Hon'ble Supreme Court, the party may, if so advised, also approach the concerned High Court.

I have heard learned counsel for the petitioner and have gone through the documents and record available on case file with her able assistance.

The abovementioned judgment as well as the ratio laid down by the Hon'ble Supreme Court is undisputed. However, what needs to be examined is as to whether the present petition can be entertained at this stage after such inordinate delay. It is clearly an attempt to reopen a lis that has already become final between the parties and that too after an expiry of more than 10½ years of the orders passed by the State Commission as well as National Commission. It is also seen that the written statement had been filed by the respondent-HSVP in the year 1999 and the Misc. Application No.975 of 2019 was filed after a period of nearly 20 years. The plea of alleged fraudulent misrepresentation was hence, raised for the first time after a delay of more than two decades that too when the parties had already appeared before the State Commission in an appeal and the father of the petitioner had also preferred a Revision Petition before the National Commission, New Delhi. Despite the opportunity having been provided and availed, the ground of challenge before the National Commission, New Delhi in the Revision Petition did not refer to or allege any fraud having been practiced. It is incomprehensible that the plea of fraud would not have been taken by the father of the petitioner before the appellate as well revisional forums when he was duly represented, had there been any substance to the same. Moreover, it is also noteworthy that the father of the petitioner deposited the differential amount so as to make up the 25% of the allotment price against the plot in Sector 29, Urban Estate, Panipat. By the abovesaid conduct, the father of the petitioner clearly intended to retain the abovesaid allotment as well. However, the remaining amount was still not deposited. As a matter of fact, in the complaint originally filed before the District Forum, Panipat, the second prayer made by the father of the petitioner was to allot industrial plot from a fresh date at the rate which was prevalent on the date when the plot was allotted for the first time to the father of the petitioner i.e. at the rate of Rs.355/- per sq. meter in Sector 29 and at the rate of Rs.470/- per sq. meter in Sector 25. The aforesaid prayer clearly shows that the father of the petitioner intended to retain the said plot allotted to him in Sector 29 and was only aggrieved of the same having been allotted at a revised rate of Rs.408/- per sq. meter in Sector 29. The grievance was thus only to the extent of rate at which the allotment was made subsequently.

Learned Counsel for the petitioner could not offer any valid explanation for the inordinate delay of more than 10½ years in filing M.A. No.975 of 2019 for seeking annulment of the order passed by the State Commission. Surprisingly, even though the abovesaid M.A. was dismissed by the State Commission vide its order dated 07.09.2021, in which Review Application No.07 of 2021 was filed, however, the order dated 07.09.2021 passed in M.A. No.975 of 2019 is not subject matter of challenge in the present petition. The challenge is instead to the dismissal orders passed in Review Application No.07 of 2021 and M.A. No.753 of 2021, which was infact a second Misc. Application for seeking annulment of the order of the State Commission, U.T., Chandigarh. The order passed in M.A. No.975 of 2019 for seeking annulment remains unchallenged till date.

The long and inordinate delay of more than 10½ years, that has already elapsed, despite being in the know of the reply, cannot be ignored or condoned merely because the petitioner filed a Review Application. Filing of the abovesaid Review Application would not *ipso-facto* be construed as condoning the inordinate and unexplained delay in approaching the Court, in the event the grievance actually subsisted.

I am also not in agreement with the contention raised today that there was a fraudulent misrepresentation by the respondent-Authority in not informing that the earlier application dated 19.04.1990 was withdrawn by the father of the petitioner. There was no pleading by the father of the petitioner qua the withdrawal of his earlier application and as such, it cannot be said that a fraudulent response had been filed giving a misstatement qua the status of the application dated 19.04.1990 moved by the father of the petitioner qua allotment of the plot.

It is also seen that after the passing of the Award by the State Commission, the father of the petitioner also deposited the balance amount on 29.04.2009. The respondent-Authorities specifically informed the petitioner that the abovesaid amount could not be accepted since the plot in question already stood resumed as there was a delay beyond the statutory period in depositing the said amount. The acceptance of the request and the balance amount, at the rates that were prevalent in 1995, shall occasion huge financial loss to the respondent-Authorities. It was thus decided to refund the abovesaid differential amount alongwith interest in case the amount has been received. It is thus evident that notwithstanding the plot had already been resumed on account of non-payment of the allotment money within the prescribed time period and without challenging the order of resumption of the said plot, the present set of applications as well as writ petition has been filed to masquerade redressal of the grievance qua the rate of allotment. The same is apparently a mischievous attempt for seeking restoration of the resumed plot under the pretext of orders that may be so passed by the High Court.

The commercial plots held by the respondent-HSVP are public property and when being sought to be utilized for commercial purposes, there is no reason or occasion as to why any undue and unreasonable concession ought to be extended in favour of the petitioner, as it may amount to conferring windfall gains to the petitioner at the cost of State largesse. The petitioner having reconciled to his fate cannot seek revival of a dead cause by way of an indirect litigation especially when the petitioner or his father had chosen not to resort to the appropriate remedies and procedure. The process of law does not come to the aid of mischief.

Ordinarily, such adventures deserve to be dealt with strictly. This Court was inclined to impose heavy costs on the petitioner for such blatant attempt at misusing the process of law and attempting to mislead the Court by filing ill-conceived and mischievous petition. The costs, however, stand waived off on the insistence of the counsel representing the petitioner.

Consequently, finding no merit in the present petition and for the foregoing facts and reasons, the present petition is dismissed in limine.

(VINOD S. BHARDWAJ)
JUDGE

24th May, 2023
rajender

Whether speaking/reasoned *:Yes/No*
Whether reportable *: Yes/No*